

ADDUCCI, DORF, LEHNER, MITCHELL & BLANKENSHIP, P.C.

ATTORNEYS AT LAW

SUITE 2130
150 NORTH MICHIGAN AVENUE
CHICAGO, ILLINOIS 60601-7524

Michael C. Dorf
Direct Dial (312) 781-2806
E-Mail mdorf@adlmb.com

TELEPHONE (312) 781-2800
FACSIMILE (312) 781-2811

May 1, 2006

**BY FACSIMILE AND
FEDERAL EXPRESS**

Jeff S. Jordan, Esq.
Supervisory Attorney
Complaints Examination and
Legal Administration
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2006 MAY -2 P 3:34

Re: MUR 5718
Citizens for Giannoulas

Dear Mr. Jordan:

I am writing on behalf of Citizens for Giannoulas, the principal campaign committee of Alexander Giannoulas, the Democratic nominee for the office of Treasurer of the State of Illinois (the "Committee"), in response to your letter dated March 22, 2006 regarding a complaint (the "Complaint") filed with the Federal Election Commission (the "Commission") alleging that the Committee may have violated the Federal Election Campaign Act of 1971, as amended (the "Act").¹ In accordance with the Commission's subsequent letter dated April 7, 2006, the

¹The complainant, Illinois Republican Party, actually names an entity known as "Giannoulas for Treasurer" in its complaint, stating that such entity is the principal campaign committee of Mr. Giannoulas. No such entity exists. The complainant has also attached what it alleges to be a "transcript" of a radio advertisement including the tag line "Paid for by Giannoulas for Treasurer." No such advertisement ran on any station. An advertisement with the tag line "Paid for by Citizens for Giannoulas", with the remainder of the text substantially similar to the "transcript" was aired as part of the Committee's activities. The Commission addressed its March 22, 2006 letter to Demetris Giannoulas, Treasurer of Citizens for Giannoulas, and, accordingly, the Committee has responded to the facts alleged in the Complaint. To minimize confusion, the Committee will assume that the facts alleged in the Complaint are directed at it.

Committee has been given a deadline of May 1, 2006 to respond. Accordingly, this response is timely submitted.

I. The Complaint

The Complaint alleges that a campaign billboard, paid for by the Committee with non-federal funds, exhibited a picture of Alexander Giannoulas standing next to United States Representative Jesse Jackson, Jr., with the words "Alexi Giannoulas for State Treasurer" and "Honesty and Integrity - For a Change". The Complaint does not allege that either Mr. Jackson's name or title appeared on the billboard.

The Complaint further alleges that a radio commercial, paid for by the Committee with non-federal funds, included endorsements of Mr. Giannoulas by Congressman Jackson and by United States Senator Barack Obama. The federal officials are identified by a narrator by name and title, and each of them, without further identification of themselves, state their endorsement of Mr. Giannoulas.

II. Statement of Facts

The Committee confirms that Congressman Jackson's picture appeared on a billboard supporting the election of Alexander Giannoulas for Treasurer of the State of Illinois in the Democratic primary election held on March 21, 2006 (the "Primary Election"). The Committee also confirms that a radio advertisement ran on several radio stations throughout the state which included the voices of Congressman Jackson and Senator Obama, endorsing Mr. Giannoulas. Congressman Jackson was the unopposed candidate for the Democratic nomination for United States Representative for the Second District of Illinois in the Primary Election. Senator Obama was not a candidate for any office in the Primary Election.² There was no reference to Mr. Jackson's name or title on the billboard. The only references in the radio advertisement to Messrs. Jackson's and Obama's names and titles were made by a narrator voice over at the beginning of the advertisement. It is also clear from both the picture of the billboard contained in the Complaint, as well as from the radio transcript that neither form of communication promoted, supported, attacked or opposed Congressman Jackson or Senator Obama, or any candidate seeking election either to U.S. Representative for the Second District of the State of Illinois, or

²The Complaint states that it is directed at the Committee and Congressman Jackson, but also discusses Senator Obama's "apparent attempt to circumvent federal election laws". Accordingly, this response will discuss the endorsements of both Congressman Jackson and Senator Obama.

United States Senator for the State of Illinois.³ The Committee also confirms that the Committee paid for both the billboard and the radio broadcast with non-federal funds permitted under the Illinois Election Code, and the statement "Paid for by Citizens for Giannoulas" appears on the billboard and is recited in the radio advertisement. Finally, the Committee confirms that the billboard appeared and the radio broadcast occurred within thirty days of the Primary Election.

III. Discussion

The sole question for the Commission to consider in this matter is whether an endorsement by a federal candidate of a state candidate, which is paid for out of non-federal funds by the state candidate's authorized committee, constitutes a coordinated communication which results in an improper in-kind contribution from the state candidate to the local candidate in violation of the Act.

In order to be a "coordinated communication," a communication must meet the Commission's three pronged test for determining whether a communication constitutes an in-kind contribution to the Federal candidate. Without going into a full analysis, the Committee notes that the only one of the four "content standards" set forth by the Commission in 11 CFR 100.29 (c)(1)-(4), which might be applicable, subsection (c)(1), requires that the communication be an "electioneering communication." See 11 CFR 100.29 (c)(1). The definition for "electioneering communication" specifically excludes any communication which is "not described in 2 U.S.C. 431(20)(A)(iii) and is paid for by a candidate for State or local office in connection with an election to State or local office." 11CFR 100.29(c)(5). The referenced section, 2 U.S.C. 431(20)(A)(iii), refers to a "public communication that refers to a clearly identified candidate for Federal office...and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office..."

It is clear that neither the billboard nor the radio advertisement meet the definition of "electioneering communications." Both communications were paid for by the Committee. The billboard has no identification of Congressman Jackson other than his image. The radio advertisement identifies Representative Jackson and Senator Obama only by name, and does not in any way promote or support them. Without more, therefore, the Complaint should be dismissed.

Moreover, as a result of the decisions in Shays v. FEC, 337 F. Supp. 2d 28 (D.D.C.

³As stated earlier, the transcript provided in the Complaint is inaccurate. The Committee submits with this response an accurate transcript. In addition, the Committee submits with the overnighted copy of this response a CD containing the audio version of the radio advertisement.

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2004), aff'd Shays v. FEC, 414 F.3d 76 (D.C.Cir. 2005), which invalidated portions of the "content prong" of the test used to determine "coordinated communications", the Commission issued a Notice of Proposed Rulemaking on Coordinated Communications, Notice 2005-28, 70 Fed. Reg. No. 239, pp. 73946-73959 (Dec. 14, 2005) (the "Notice") and held a series of public hearings on the topic. The Notice specifically invited comments "regarding the application of the coordinated communication test to situations in which Federal candidates endorse, or solicit funds for, other Federal and non-Federal candidates or State ballot initiatives" and asked "whether to exempt from the coordinated communication rules a Federal candidate's appearance or use of a candidate's name in a communication to endorse other Federal or non-Federal candidates." (Notice, p. 73953).

As the Commission itself had previously pointed out in Advisory Opinion 2003-25 (October 17, 2003), which involved the endorsement of a local candidate by United States Senator Evan Bayh:

"Congress, in passing [the Bipartisan Campaign Reform Act of 2002] BCRA, specifically contemplated communications paid for by a State or local candidate and referring to a Federal candidate's endorsement of a State or local candidate. One of BCRA's principal sponsors, Senator Feingold, explained that the relevant BCRA provisions would not prohibit 'spending non-Federal money to run advertisements that mention that [state candidates] have been endorsed by a Federal candidate or say that they identify with a position of a named Federal candidate, so long as those advertisements do not support, attack, promote or oppose the Federal candidate.' 148 Cong. Rec. S2143 (daily ed. March 20, 2002)."

(AO 2003-25, October 17, 2003)

Representatives of both major political parties responded to the Notice with requests that a "safe harbor" or other exemption be provided for endorsements by Federal candidates of non-Federal candidates. Thomas J. Josefiak, Chief Counsel, Republican National Committee, wrote that "[t]he purpose of a Federal candidate's endorsement message is to aid the *endorsed* candidate or ballot measure, not to aid the *endorsing* candidate's own election. Where the endorsed candidate...pays for the communication, no in-kind contribution should result to the endorsing candidate." (FEC public comment file, Letter dated January 13, 2006. Emph. in original). Mark Brewer, President of the Association of State Democratic Chairs, responded that "[a] new entrant into politics gains public trust and becomes credible when she is able to tout the endorsement of a respected officeholder. These endorsements are seldom, if ever, of electoral value to the endorsing candidate. To make it a violation of law and a potential criminal offense for a state or local candidate merely to tell the public that a Federal officeholder has endorsed her

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serves no legitimate governmental purpose.” (Comments of Mark Brewer, FEC public comment file). Brian Svoboda, testifying before the Commission on behalf of the Democratic Legislative Campaign Committee, noted that historically, state and local candidates had paid for “advertisements and communications that noted their endorsement by federal candidates,” based upon the Commission’s ruling in AO 1982-56, and that, at least until the Commission’s determinations in AO 2003-25 and AO 2004-1, “a state legislator, a member of Congress leaving passage of the Shays-Meehan or McCain-Feingold bills, might very well have concluded that the world was going to continue, as it had before, with respect to that practice.” (Public Hearing on Coordinated Communications, Jan 26, 2006, Transcript, p. 16).

The Commission agreed with these arguments, and recently voted to amend section 109.21 to create the safe harbor which precisely covers the instant situation:

“(h) Safe harbor for endorsements and solicitations by Federal candidates.

- (1) a public communication in which a candidate for Federal office endorses another candidate for Federal or non-Federal office does not satisfy the standards in paragraph (c) or (d) of [section 109.21] with respect to the endorsing Federal candidate unless the public communication promotes, supports, attacks, or opposes the endorsing candidate or another candidate for the same office as the endorsing candidate.”

Under this standard, there is no question that the billboard and radio endorsements of Mr. Giannoulis by both Congressman Jackson and Senator Obama fall within the safe harbor.⁴ Even without this rule, however, it is clear that the endorsements by Congressman Jackson and Senator Obama did not violate federal election law. Senator Obama was not even on the Primary Election ballot and his participation falls squarely within the fact situation permitted under AO 2003-25. Congressman Jackson ran unopposed in the Primary Election and cannot be considered to have benefitted in any way from the billboard or radio advertisement.

IV. Conclusion

The Committee paid for billboard and radio advertisements containing the endorsement of a local candidate, Alexander Giannoulis, by two Federal candidates, United States Representative Jesse Jackson, Jr., and United States Senator Barack Obama. There was no

⁴Although Senator Obama will not be up for re-election until 2010, he is considered a “candidate” under 2 USC 431 (2), as he has received contributions or made expenditures over \$5000 for such re-election.

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“electioneering communication” as neither endorsement promoted, supported, attacked or opposed Congressman Jackson or Senator Obama, or any candidate seeking election either to U.S. Representative for the Second District of the State of Illinois, or United States Senator for the State of Illinois. It is factually evident that neither endorsement benefitted the election of the Federal candidate. It is also clear from the legislative history underlying the Bipartisan Campaign Reform Act of 2002, the hearings held by the Commission on coordinated communications, and the new rule promulgated by the Commission concerning endorsements, that endorsements by Federal candidates of non-Federal candidates are not to be considered in-kind contributions by the non-Federal candidate provided that the endorsement does not promote, support, attack or oppose the Federal candidate or other candidates for the federal office. The Committee respectfully requests that the General Counsel recommend to the Commission that there is no reason to believe that the Complaint sets forth a possible violation of the Act and, accordingly, close the file on this matter.

I would be pleased to provide any additional information.

Respectfully submitted,



Michael E. Dorf
On behalf of Citizens for Giannoulas

Enclosures

"Combo"

Giannoulas for Treasurer

:60 radio

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	<p>VO: Congressman Jesse Jackson Jr. and Senator Barack Obama talk about why they endorse Alexi Giannoulas for State-Treasurer.</p> <p>CONGRESSMAN JACKSON: "These are challenging times; times that demand qualified elected leaders who have demonstrated skills. In this environment we can no longer afford politics as usual. And for the state treasurer there is no more qualified individual than Alexi.</p> <p>"When it comes to fiscal management he stands alone...It is indeed a privilege and an honor to extend my wholehearted unqualified endorsement to Alexi Giannoulas."</p> <p>OBAMA: "Alexi Giannoulas...is one of the outstanding young men that I could ever hope to meet...What we want in the job of Treasurer is somebody who actually knows how money works and knows how to manage it...and make sound investments that protect people's pensions...</p> <p>VO: Alexi Giannoulas...Bank Vice President. Financial Expert. Democrat for Treasurer.</p> <p>OBAMA: "Alexi Giannoulas...he is going to be an outstanding treasurer."</p> <p>AG: Paid for by Citizens for Giannoulas</p>
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